THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

-

WRIT APPEAL No. 538 OF 2006

% 30-05-2006

G.Rajababu

…Appellant

A N D

$ The Revenue Divisional Officer,
Peddapuram, E.G.District & another

… Respondents

<GIST

>HEAD NOTE:

! COUNSEL FOR THE PETITIONER: SRI VVN.NARAYANA RAO

^ COUNSEL FOR THE RESPONDENTS: G.P. FOR CIVIL SUPPLIES

? CASES REFERRED:
1. AIR 1986 SC 180

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL No. 538 OF 2006

Dated 30th May 2006

Between:

G.Rajababu S/o.Sri Bennayya

…Appellant

And

The Revenue Divisional Officer,
Peddapuram, East Godavari District & another

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL No. 538 OF 2006

O R D E R: (Per the Hon'ble Sri Justice L.Narasimha Reddy)

The appellant was appointed as a Fair Price Shop dealer for K.O.Mallavaram village of Tuni Mandal, East Godavari District, in the year1989, by the 1st respondent. In the year 1999, proceedings were initiated against him, under Section 6-A of the Essential Commodities Act, and that the Joint Collector, East Godavari, passed an order dated 21.9.1999, directing confiscation of the seized stock. Criminal Appeal No.343 of 1999, preferred by the appellant in the Court of Sessions Judge, Rajahmundry, is said to be pending.

The 1st respondent issued order dated 3.1.2000, canceling the dealership of the appellant, on the ground that an order of confiscation

of stock has been passed by the Joint Collector, on 21.9.1999. Challenging the same, the appellant filed W.P.No.1371 of 2000.

Appellant contended that he was not issued any notice by the 1st respondent, before the order of cancellation was passed. Several other contentions were also raised. The respondents do not appear to have filed any counter affidavit. The learned Single Judge dismissed the writ petition, through order dated 17.4.2006. Hence this Writ Appeal.

Sri V.V.N.Narayana Rao, learned counsel for the appellant, submits that the order challenged in the writ petition was passed, in utter violation of principles of natural justice, and that the learned Single Judge ought not to have dismissed the writ petition. He submits that interpretation placed by the learned Single Judge upon the clause contained in the A.P. Scheduled Commodities (Regulation and Distribution by Card System) Order 1973, for short "the Control Order", cannot be sustained in law. He contends that the Control Order, at the most, enables the appointing authority to cancel authorization, where the dealer is convicted by the court of law, and the appellant was not convicted in any case, at all. He submits that an order of confiscation can, in no way, be equated to an order of conviction.

Learned Government Pleader for Civil Supplies, on the other hand, submits that the appellant does not have any fundamental right to be continued as Fair Price Shop dealer, and an order of confiscation passed under the Essential Commodities Act, can certainly constitute the basis for cancellation of the dealership.

The only ground urged in the writ petition, as well as in the writ appeal, is that the 1st respondent did not follow the principles of

natural justice, before canceling the authorization of the appellant. It is not in dispute that the 1st respondent did not issue any notice to the appellant, before passing the order dated 3.1.2000. Clause 3 of the Control Order prescribes the procedure for appointment of dealers and the other matters, ancillary thereto. Sub-clause (4) of clause 3 vests power in the appointing authority, to amend, vary, suspend or cancel the authorization of a dealer. Through G.O.No.640, dated 8.8.1989, the following paragraphs were added to sub-clause (4) of clause 3:

> " Where a Fair Price Shop dealer has been convicted by a Court of law in respect of contravention of any order made under Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) relating to any of the Commodities mentioned in the Schedule to this order, the appointing authority shall, by order in writing, cancel his authorization.
>
> Provided that where such conviction is set aside in any appeal or revision, the appointing authority may, on application in Form-1 made by the person whose authorization has been cancelled, re-issue the authorization to such person."

From a perusal of the same, it is evident that where a Fair Price Shop dealer is "convicted" by a "court of law", for any contravention of the provisions of Essential Commodities Act, or orders issued thereunder, the appointing authority is empowered to cancel the authorization of a dealer. Placing reliance upon this clause, the learned Single Judge dismissed the writ petition. The interpretation placed by the learned Single Judge on the said clause, proceeds as under:

> "A reading of the amendment effected to sub-clause (4) of clause 3 through G.O.Ms.No.640, dated 8.8.1989 mandates that whenever an order is passed for confiscation of the stocks under Section 6-A of the Essential Commodities Act or the dealer is convicted by the Criminal Court, the authorization of that dealer shall be cancelled which does not contemplate any further notice since necessary notice has

> already been issued in the proceedings initiated under Section 6-A of the Essential Commodities Act for the violation of the Control Order."

We find it difficult to agree with the view taken by the learned Single Judge. At the out set, the facts of the present case do not fit into the frame of sub-clause (4) of clause 3, which is extracted above. The reason is that the appellant was not "convicted" in any proceedings, and the Joint Collector, who passed the order of confiscation, cannot be equated to a "court of law". It was proceeded, as though an order of confiscation passed by the Joint Collector, is equivalent to a conviction by a court law.

It hardly needs any emphasis that conviction by a court of law is radically different, from an order of confiscation passed by a quasi judicial, or administrative authority. The former is a typical phenomenon, or an incidence of criminal law. Whenever ordered, conviction entails the curtailment of civil corporeal rights of an individual. On being found guilty of an offence, an individual would be subjected to, either bodily confinement in the form of imprisonment, or imposition of fine, or both. Conviction is always with reference, to and against the individual, who is found guilty.

Confiscation, on the other hand, is a phenomenon, mostly in the realm of regulation of property, be it under Revenue, Civil Supplies, or other related laws. It may have its traces in criminal law also, but its application and operation is independent of the circumstances leading to conviction of an individual.

The order of confiscation is directed against properties, which are handled or dealt with, in contravention of the relevant provisions of law. It would result in forfeiture or appropriation of the property, to the

State. For example, any law imposing restrictions on manufacture, distribution or possession of any goods, may provide for seizure and confiscation of the goods, which are manufactured, distributed or possessed, in contravention of such laws. An order of confiscation by itself, does not entail any curtailment of the rights of the person, who was found to have handled the confiscated goods. For any punitive action against the individual from whom the goods were confiscated, separate proceedings must be initiated. Therefore, there does not exist any scope for equating conviction with confiscation, or *vice versa.*

Secondly, even assuming that the appellant herein was convicted of an offence, as mentioned in clause 3(4) of the Control Order, referred to above, the appointing authority cannot feel himself liberated from the obligation, to comply with the principles of natural justice. The use of the expression “shall” in the clause no doubt would restrict the discretion of the appointing authority, in the matter of cancellation of authorization, once a finding is recorded to the effect that the dealer had suffered a conviction. However, before forming an opinion that the dealer had suffered a conviction, the appointing authority is under obligation to issue a notice, to the latter. It is a requirement under the principles of natural justice, and even if the clause is silent, the requirement does not cease to subsist.

It is not necessary to search for justification for such a requirement. The appointing authority may have the information that the dealer had suffered a conviction. If the conviction is not of the category, as mentioned in the clause, or if the conviction against the dealer was set aside in appeal, as stated in the proviso to the clause, the appointing authority does not get the power to cancel the authorization. The dealer may have several explanations to offer,

taking the legal as well as factual pleas. Such a right stands abridged, if no show-cause notice is given.

Further, issuance of show-cause notice, or observance of principles of natural justice, does not depend upon the probable outcome of the whole exercise. Time and again, the Supreme Court held that the possibility of an individual may not have any plausible explanation to the proposed action, even if a notice is given, hardy constitutes a ground to deny him the right of being heard (see ***Olga Tellis v. Bombay Municipal Corporation***[1]).

In the instant case, admittedly, no notice was issued to the appellant, and it is a matter of record that he has not been convicted in any case.

Therefore, the writ appeal is allowed, and the judgment under appeal is set aside. Since it is found that the order challenged in the writ petition is in violation of principles of natural justice, the writ petition is also allowed, and the order dated 3.1.2000, is set aside. It is, however, made clear that it shall be open to the respondents, to issue notice to the appellant and take appropriate action, in accordance with law. There shall be no order as to costs.

(L. NARASIMHA REDDY, J)

(D. APPA RAO, J)

Dt: 30--05-2006
Note: L.R.copies be marked.
(B/o)
PAN

[1] AIR 1986 SC 180